IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.21 of 1993.
Date of decision: October 4th, 2007.

State of Himachal Pradesh.		…. Appellant.
	Vs.	
Madan Lal and another.		…. Respondents.

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The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.S.D. Vasudeva, Additional Advocate General.

For the Respondents: Mr. Rajnish Maniktala, Advocate, vice Mr. K.D. Shreedhar, Advocate.

Surinder Singh, J(oral):

In this appeal the State has assailed the judgment of acquittal passed by the learned Chief Judicial Magistrate, in Criminal case No.215 of 1986, decided on 3.9.1992, on law and facts.

We have heard Shri S.D. Vasudeva learned Additional Advocate General and Shri Rajnish Maniktala, learned counsel appearing for the respondents and have gone through the record of the case.

Precisely the case of the prosecution has been that the respondent Madan Lal, Junior Engineer was the Incharge of "Ramgarh Dhar water Supply Scheme", in the year 1979, in district Una. The said scheme was commissioned over an area of 150 K.Ms., in the year 1979, as per the plan Ext.PW17/A.

The police received a secret information in the month of April, 1979 that Bhagat Singh, respondent, a local shop-keeper, in collusion with the Junior Engineer aforesaid, had removed in truck No.HIL-3209 some G.I. pipes and sheets from Beeharu store of Irrigation and Public

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

Health department, pertaining to the aforesaid water supply scheme, which were kept in village Lalsinghi, besides the house of Jodh Singh.

The police Inspector Madho Ram, joined Ved Parkash (PW 7) and Hari Kishan (PW22) as independent witnesses and raided the village aforesaid and recovered 150 pipes and 15 G.I. sheets from the spot, vide memo Ext.PW7/A. The truck alongwith its log book Ext.P1 which contained the entry Ext.PW2/B were taken into possession. The statements of Banwari Lal, Chowkidar of Beeharu store of I& PH department, Jodh Singh, resident of village Lalsinghi and Sher Singh, owner and driver of the truck were also got recorded under Section 164 of the Code of Criminal Procedure before Shri B.D. Sharma, Judicial Magistrate Ist Class (PW31). The measurement book of Madan Lal, Junior Engineer, respondent alongwith MAS register, Indents and Bin Cards were also taken into possession by the police. When the matter was investigated, a Committee was also set up, which was headed by Shri K.K. Luthra, Executive Engineer, to look into the question whether the respondent Madan Lal has misappropriated the case property aforesaid. The Committee submitted its report Ext.PW12/A, according to which, respondent Madan Lal was supplied with 41814.20 meters of pipes. The State Government appointed a fresh Committee headed by Shri S.K. Gaupta, Executive Engineer (PW28) to assist the Enforcement Department to find out the true facts and Shri B.B. Kashyap, Assistant Engineer and Shri Onkar Singh, Inspector of Police were its other members. This Committee conducted the physical verification at **14** different points of places of the said scheme, over an area of 150 K.Ms and submitted its report Ext.PW21/A with random checking details. The committee of Shri S.K. Gupta found that respondent Madan Lal had shown consumption of more pipes in the measurement book, but had consumed less. Specimen signatures of the respondent No.1 were taken and sent to the handwriting expert with the admitted signatures. Report of the Government Examiner Ext.PW36/15 was obtained. After recording

the statements of the witnesses and completion of the investigation, a case was presented in the court, for trial of the respondents.

Finding a prima-facie case under Section 120-B, 409, 465, 468, 471 and 477-A of the Indian Penal Code against respondent No.1 and under Sections 120-B and 411 of the Indian Penal Code against respondent No.2, the charges were accordingly framed. Both the respondents pleaded not guilty and claimed trial. The prosecution examined its witnesses and the respondents were also examined under Section 313 of the Code of Criminal Procedure.

After complete trial and upon hearing the learned counsel for the parties, the learned trial court acquitted both the respondents from the charges framed against them, on the grounds that Shri Sher Singh, the driver of the truck, Banwari Lal, Chowkidar of the Store, did not support the case of the prosecution. According to them, no pipes and sheets were brought from Beeharu store by any of the respondents and according to them, their statements recorded under Section 164 of the Code of Criminal Procedure were made under police pressure. In the opinion of the trial court, the depositions in the court were found to be correct, for the reasons that the relevant entry in the log book Ext.P1 made at serial Number125 (Ext.PW2/B) was inserted by the Investigation Officer, showing the transportation of the above pipes and sheets having been transported from Beeharu store to village Lalsinghi. Apparently, the subsequent serial numbers were changed.

Secondly, the alleged case property so recovered was found from an open place, which was accessible to all and nobody had seen the respondent brining these articles to the above place. Therefore, it cannot not be said that respondent No.2 was the recipient of the stolen property.

Thirdly, there was no direct evidence that the recovered pipes and G.I. sheets belonged to the scheme in question, which were allegedly misappropriated or sold by respondent No.1 to respondent No.2. The Chairman of the first Committee named Shri K.K. Luthra, was not examined, however, the report of the Committee Ext.PW12/A was sought

to be proved from Rattan Lal Sharma, S.D.O. The perusal of his statement had shown that the report of the Committee was based on some official record, but no physical verification was made on the spot. Thus, it was not possible to conclude that there was shortage of 2200 meters of pipes. Further Shri Gulshan Rai (PW26), Junior Engineer has admitted that respondent No.1 almost against every indent had returned the unused pipes, the specific instances of which were also given by him.

Fourthly, Shri S.K. Gupta, was the Chairman of second Committee, he was examined as PW-28, to prove the report of the second committee. This committee had also conducted the random checking at **14** points, but did not physically check the entire length on the spot. On comparison of the reports of the Committee Ext.PW21/A and statement Ext.PW 28/A, it transpired that respondent No.1 had actually laid pipe-length in excess, to the extent of 1208.95 meters at 8 points, but had shown less in the Measurement Book. That being so, the question of misappropriation is totally over -ruled.

Fifthly, Ram Asra (PW10) also admitted that after execution of the said scheme, the pipe line was excavated number of times after the transfer of Madan Lal respondent to remove the faults in the water supply, which fact was also admitted by B.B. Kashyap (PW35). He has further admitted that the subsequent measurement books in which the repairs were reflected were not made available.

Sixthly, none of the Committees aforesaid have associated respondent No.1 Madan Lal affording him an opportunity to explain the shortages, if any. Further that none of the committee members had checked the stores to find out the shortages of the G.I. Pipes and sheets to fasten the liability of shortages, if any.

Seventhly, the alleged false entry in the measurement books is also not found to be correct in absence of the availability of the current measurement books.

Therefore, in totality of the aforesaid circumstances, the learned trial court did not find any legal evidence against the respondents to prove the charges leveled against each of them.

We have carefully, reappraised the evidence on record and in our considered opinion, the learned trial court has picked up the relevant evidence, which was properly discussed and appreciated and came to the above conclusion, which is otherwise borne out from the record. We did not find anything that the learned trial court has committed any error ignoring any material evidence. Thus, we find no valid reasons to set-aside the judgment of acquittal therefore, the judgment of acquittal is upheld and the appeal is dismissed.

The respondents are discharged for their bail bonds entered upon by them at any time during the proceedings of this case.

(Surjit Singh)
Judge.

October 4th, 2007.
(PDS)

(Surinder Singh)
Judge.